

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRETT DURANT, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

Defendant.

CASE NO. C15-1710 RAJ

ORDER

This matter comes before the Court on Defendant State Farm Mutual Automobile Insurance Company's ("State Farm" or "Defendant") motion for reconsideration (Dkt. # 53), motion to strike (Dkt. # 65), and Plaintiff's motion to certify a question to the Washington Supreme Court (Dkt. # 67). Having reviewed the parties' motions and the balance of the record, the Court finds oral argument unnecessary. For the reasons that follow, the Court **DENIES** both of State Farm's motions and **GRANTS** Plaintiff's motion.

1 **I. BACKGROUND**

2 Plaintiff seeks to bring a class action lawsuit against State Farm to halt State
3 Farm’s alleged practice of denying coverage for benefits based on a finding of
4 “maximum medical improvement.” The Court granted class certification in this matter
5 and sought input from the parties whether to certify relevant questions to the Washington
6 Supreme Court or whether to seek guidance from the Office of the Insurance
7 Commissioner (OIC). Dkt. ## 50, 55. The parties filed a joint response stating that “both
8 Plaintiff and State Farm believe that the Court should not certify these questions to the
9 Washington Supreme Court.” Dkt. # 51. However, the parties have since disagreed
10 about whether the Court should seek guidance from the OIC. *See, e.g.*, Dkt. ## 60, 63,
11 67, 70, 72, 74.

12 State Farm seeks reconsideration of the Court’s Order granting class certification.
13 Dkt. # 53. Both parties ask the Court to strike their adversaries’ briefs. Dkt. ## 63, 65.
14 Finally, Plaintiff states that he has changed his position regarding whether this Court
15 should certify questions to the Washington Supreme Court; he now moves the Court to
16 certify those questions. Dkt. # 67.

17 **II. ANALYSIS**

18 A. Motion for Reconsideration

19 Pursuant to Local Rule 7(h), motions for reconsideration are disfavored, and will
20 ordinarily be denied unless there is a showing of (a) manifest error in the prior ruling, or
21 (b) facts or legal authority which could not have been brought to the attention of the court
22 earlier through reasonable diligence. Local Rules W.D. Wash. LCR 7(h)(1). Defendant
23 does not meet this standard. Defendant’s motion reargues its position that the Court
24 should not certify the class—a position the Court rejected. Parties cannot use motions for
25 reconsideration to simply obtain a second bite at the apple, and this is what Defendant
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1 appears to be doing with its motion. For these reasons, the Court **DENIES** the motion.
2 Dkt. # 53.

3 Defendant contends that the parties agreed to narrow the language of the proposed
4 class definition. Dkt. ## 53 at 2, 54 at ¶ 3. Plaintiff does not address this apparent
5 agreement. The Court directs the parties to file a stipulation with the Court containing
6 the agreed upon language for a narrower class definition to replace the language from the
7 Court's prior order. The parties must do so within forty-five (45) days of the date of this
8 Order.

9 B. Motions to Strike

10 On April 7, 2017, pursuant to Local Rule 7(g), Plaintiff notified the Court he
11 would file a Surreply. Dkt. # 62. In his Surreply, Plaintiff moves the Court to strike
12 Defendant's "overlength" reply brief and responds to "new issues" raised by Defendant
13 in its Reply. Dkt. # 63. Plaintiff cites Local Rule 7(e) for his argument that Defendant
14 exceeded the page limit on its Reply to the Motion for Reconsideration. Dkt. # 63 at 2.
15 However, Local Rule 7(e) does not prescribe a page limit for reply briefs to motions for
16 reconsideration. The Court did not limit Defendant's Reply. Dkt. # 55. For this reason,
17 the Court **DENIES** Plaintiff's motion to strike due to length.

18 On April 11, 2017, Defendant filed its own motion to strike, requesting that the
19 Court strike Plaintiff's Surreply. Dkt. # 65. Defendant argues that it did not violate the
20 Court's page limit rules and responds to Plaintiff's arguments regarding "new issues."
21 *Id.* This motion reads as a response to Plaintiff's Surreply; Defendant fails to present a
22 basis for striking the Surreply. Plaintiff's Surreply satisfies the requirements under the
23 Local Rules, and the Court finds no reason to strike that pleading. For these reasons, the
24 Court **DENIES** Defendant's motion to strike.

1 C. Motion to Certify Questions to the Washington Supreme Court

2 Whether to certify a question to the state supreme court is within the sound
3 discretion of the federal court. *See Thompson v. Paul*, 547 F.3d 1055, 1065 (9th Cir.
4 2008). Where state law is unsettled, and the answers to the Court’s questions are
5 dispositive of the issues, certification to the state supreme court is appropriate. *Amaker v.*
6 *King County*, 540 F.3d 1012, 1013 (9th Cir. 2008); RCW 2.60.020. Certification is
7 appropriate in this case where the state issues are unsettled and a determination would
8 dispose of nearly all the claims. The Court finds certification to the Washington Supreme
9 Court especially compelling because the OIC has already presented potentially competing
10 legal theories on the issue. Dkt. # 74-1. Moreover, both parties agree that guidance from
11 the OIC will not be binding on this Court, and input of the Washington Supreme Court
12 “will ensure that this case proceeds to judgment (and through any appeal) on a firm legal
13 footing.” *Allen v. Dameron*, No. C14-1263RSL, 2016 WL 4772484, at *2 (W.D. Wash.
14 Apr. 22, 2016); *see also* Dkt. ## 67, 70. The Court also finds that certifying the questions
15 in this matter to the Washington Supreme Court will “save time, energy, and resources
16 and help[] build a cooperative judicial federalism.” *Lehman Bros. v. Schein*, 416 U.S.
17 386, 391 (1974).

18 For the foregoing reasons, the Court certifies the following questions to the
19 Washington Supreme Court:

- 20 1. Does an insurer violate WAC 284-30-395(1)(a) or (b) if that insurer denies,
21 limits, or terminates an insured’s medical or hospital benefits claim based on a
22 finding of “maximum medical improvement”?
- 23 2. Is the term “maximum medical improvement” consistent with the definition of
24 “reasonable” or “necessary” as those terms appear in WAC 284-30-395(1)?

25 The Clerk of Court is directed to submit to the Washington Supreme Court
26 certified copies of this Order, a copy of the docket in the above-captioned matter, and
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1 Dkt. ## 1, 4, 5, 7, 27-32, 34-44, 46, 50, 51, 67, 68, and 70-74. The record so compiled
2 contains all matters in the pending cause deemed material for consideration of the state
3 law questions certified for answer.

4 The plaintiff in this action is designated as the appellant before the Washington
5 Supreme Court. The Clerk of Court shall notify the parties as soon as possible, but no
6 more than three days, after the above-described record is filed with the Washington
7 Supreme Court.

8 **III. CONCLUSION**

9 For the reasons stated above, the Court **DENIES** Defendant's motion for
10 reconsideration and motion to strike. Dkt. ## 53, 65. The Court **INSTRUCTS** the
11 parties to file a stipulation within forty-five (45) days of the date of this Order containing
12 the agreed upon narrower language for the class definition. The Court **GRANTS**
13 Plaintiff's motion to certify questions to the Washington Supreme Court. Dkt. # 67. The
14 Clerk of Court is **DIRECTED** to certify the questions as described above.

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16 Dated this 10th day of July, 2017.

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20 The Honorable Richard A. Jones
21 United States District Judge
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